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October 15, 1987

John M. Sipple, Jr., Esq.
Premerger Notification Office
Bureau of Compliance
Federal Trade Commission
Pennsylvania Avenue at 6th Street, N.W.
Room 396
Washington, D.C. 20580

Dear Mr. Sipple:

I am writing on behalf of [REDACTED] to bring to your attention the violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") with respect to the acquisition of [REDACTED] voting securities by entities controlled by [REDACTED]. During the period from May 28, 1987 to June 16, 1987, [REDACTED] caused [REDACTED] an entity controlled by [REDACTED] to purchase [REDACTED] stock in the open market. These purchases had a dollar value of [REDACTED] as calculated pursuant to \$801.13 of the Premerger Rules. [REDACTED] subsequently sold [REDACTED] shares during the second half of June, leaving it

*On July 23, 1987, [REDACTED] a Premerger Notification Form with respect to [REDACTED] HSR notification letter to [REDACTED] (a copy of which is attached), [REDACTED] acknowledges that he is the ultimate parent entity controlling [REDACTED]

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with [redacted] shares of [redacted] stock. These remaining shares had a dollar value of \$22.4 million. [redacted] did not file a Premerger Notification Form with respect to these purchases of [redacted] voting securities until [redacted] - fifty days after he first exceeded the \$15 million reporting threshold.**

[redacted] can point to no exemptions which might immunize the purchases of [redacted] voting securities he made between May 28 and June 16 from the notification and waiting period requirements of the HSR Act. As noted above, [redacted] does not dispute that he controls [redacted] and thus, may not portray [redacted] as a newly formed ultimate parent entity, qualifying for a reporting exemption under § 801.11(e) of the Premerger Rules.

Nor may [redacted] invoke the "investment only" exemption (see 15 U.S.C. § 18a(c)(9); 16 C.F.R. § 802.9) since [redacted] has never had the requisite passive investment intent. Indeed, [redacted] evinced an intent to acquire control of [redacted] as early as June 17, 1987 -- the day after [redacted] had completed its three-week buying spree, accumulating over [redacted] worth [redacted] stock. In a telephone conversation on that day, [redacted]

[redacted] (investment banker) that an entity controlled by [redacted] was now the largest shareholder of [redacted]. [redacted] further indicated that the [redacted] were interested in acquiring [redacted] and would like to speak to the company's management about such an acquisition. [redacted] intention to acquire control of [redacted] was again evidenced on July 23, 1987 when [redacted] filed a Premerger Notification Form to acquire in excess of 50% of [redacted] voting securities [redacted] Notification letter, a copy of which is attached). [redacted] held

[redacted]
[redacted] stock and has begun a proxy fight to gain control of [redacted] Board of Directors.

**Based on information contained in [redacted] it is clear that [redacted] was in violation of the HSR Act as of June 3, 1987. As of that date [redacted] shares [redacted], which shares had a dollar value of [redacted] as calculated pursuant to Section 801.13 of the Premerger Rules.

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[redacted] worth of [redacted] voting securities when he made this filing. Finally, the Schedules 14-B filed on October 6, 1987 by the [redacted] and its affiliates (including [redacted] and the [redacted] an entity 51% owned by [redacted] for the purpose of engaging in a proxy solicitation to replace [redacted] Board of Directors clearly cannot be reconciled with a passive investment intent.

These expressions of [redacted] intent and the actions taken by [redacted] and entities controlled by him are identical to the "range of activities" which the Bureau of Competition listed as "inconsistent with an investment intent" in the oft-cited [redacted] dated August 19, 1982. The letter noted, in particular, that statements made by [redacted] that it might seek control of [redacted] as well as actions taken by [redacted] in "preparation for a proxy fight" negated claims that acquisitions of voting securities were made solely for the purpose of investment.

For the foregoing reasons, [redacted] may not claim the investment exemption with respect to his purchases of [redacted] voting securities. No standards of compliance under the HSR Act have been more clearly articulated or more visibly enforced than those relating to the investment exemption. [redacted] has had extensive experience with respect to corporate takeovers and has engaged in a variety of HSR Act evasion devices in the past. [redacted] cannot seriously contend that he was ignorant of the Commission's position with respect to abuses of the investment exemption. Nor [redacted] be unaware of the Commission's widely publicized concerns that some persons might be tempted to engage in evasion devices in order to avoid or delay their premerger notification filings "until they were required by the federal securities laws to announce their acquisition publicly." 52 Fed. Reg. 20060 (May 29, 1987). Accordingly, we request that the HSR Act be promptly enforced and that the maximum monetary penalties under the HSR Act be assessed against [redacted] and the entities under his control.

Sincerely,

[redacted signature]

cc: Jeffrey I. Zuckerman, Esq.
Director
Bureau of Competition
Federal Trade Commission